

REMARKSI. Introduction

In response to the Office Action dated June 8, 2010, please consider the attached Declarations of Victor G. Cooper, Leon J. Stanger and Robert G. Arsenault. Re-examination and re-consideration of the application, as amended, is requested.

II. Examiner Interview

Reference is hereby made to a telephone interview between Applicants' attorney Victor G. Cooper, and Examiner Ricky Chin in connection with the present patent application, in which the sufficiency of the Rule 131 affidavits were discussed.

III. Office Action Rejections

In paragraph 1, the Office Action indicates that the declaration submitted under 37 C.F.R. 1.131 is ineffective because (1) the declaration is not signed by all of the inventors/applicants or other qualified party, (2) the draft specification is not earlier than the effective date of the Sie reference, and (3) the Applicant must provide evidence of diligence during the critical period.

According to MPEP § 2138.06:

DILIGENCE REQUIRED IN PREPARING AND FILING PATENT APPLICATION

The diligence of attorney in preparing and filing patent application inures to the benefit of the inventor. Conception was established at least as early as the date a draft of a patent application was finished by a patent attorney on behalf of the inventor. Conception is less a matter of signature than it is one of disclosure. Attorney does not prepare a patent application on behalf of particular named persons, but on behalf of the true inventive entity. Six days to execute and file application is acceptable. *Haskell v. Coleburne*, 671 F.2d 1362, 213 USPQ 192, 195 (CCPA 1982). See also *Bey v. Kollonitsch*, 866 F.2d 1024, 231 USPQ 967 (Fed. Cir. 1986) (Reasonable diligence is all that is required of the attorney. Reasonable diligence is established if attorney worked reasonably hard on the application during the continuous critical period. If the attorney has a reasonable backlog of unrelated cases which he takes up in chronological order and carries out expeditiously, that is sufficient. Work on a related case(s) that contributed substantially to the ultimate preparation of an application can be credited as diligence.).

Accordingly:

1. In this case conception is shown by the preparation of a draft patent application before the critical date of the Sie reference, as evidenced by the Declaration of Victor G. Cooper and accompanying Exhibit 1.

2. Reasonable diligence is all that is required, and this is established if the attorney worked reasonably hard on the application during the continuous critical period. In this case, reasonable diligence is evidenced by the Declarations of Victor G. Cooper, Leon J. Stanger, and Robert G. Arsenault during the applicable period.


IV. Conclusion

In view of the above, it is submitted that this application is now in good order for allowance and such allowance is respectfully solicited. Should the Examiner believe minor matters remain that can be resolved in a telephone interview, the Examiner is urged to call Applicants' undersigned attorney.

In addition, a petition for a one month extension of time under 37 C.F.R. §1.136(a) is necessary to maintain the pendency of this case. The Applicants request that the Commissioner consider this paper to be a petition for an appropriate extension of time and hereby authorize the Commissioner to charge any deficiency in the fee as set forth in 37 C.F.R. §1.17(a) corresponding to the needed extension of time to Applicant's Deposit Account No. 50-0383. The required extension fee accompanies this response via electronic fee transfer.

Respectfully submitted,

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